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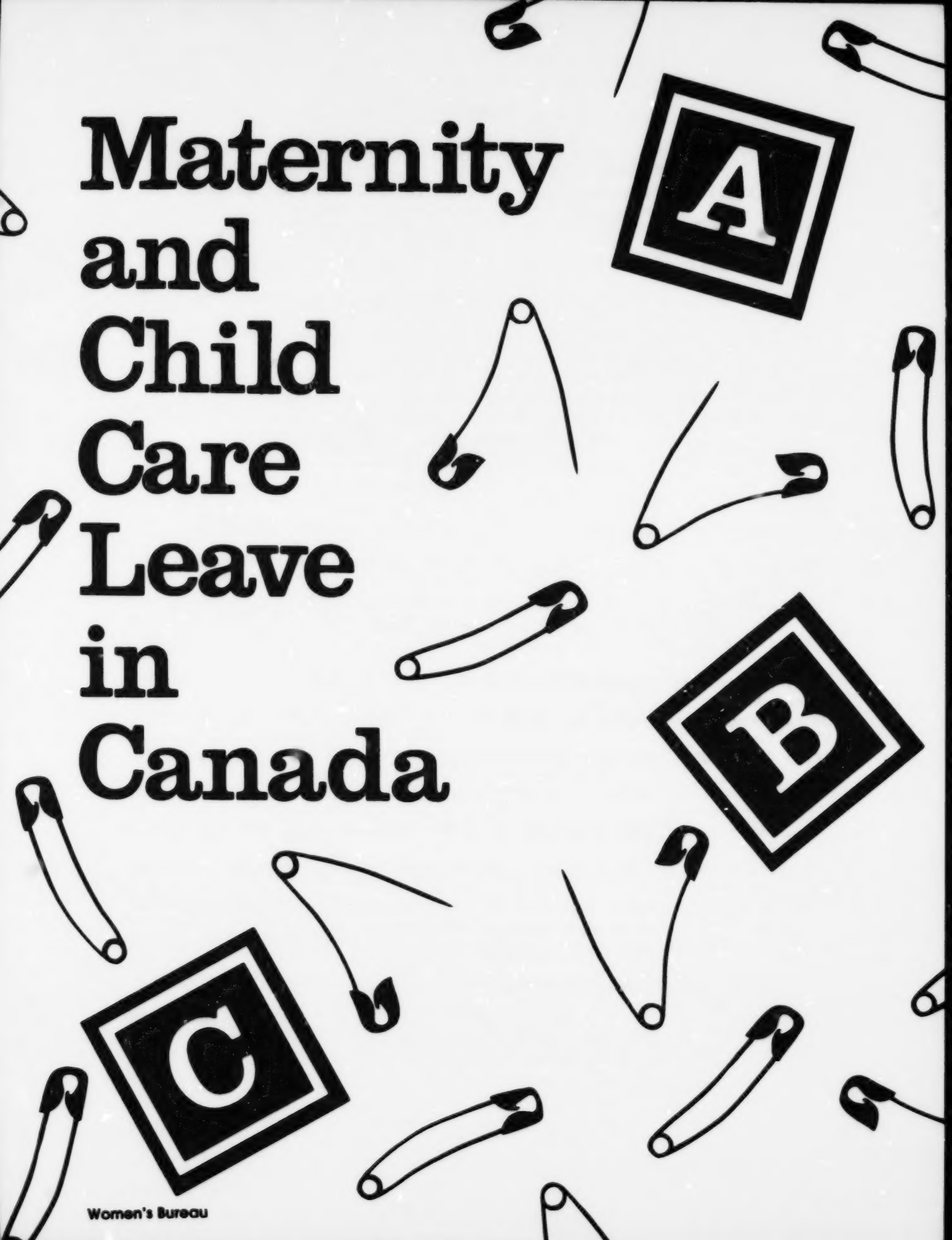
Maternity and Child Care Leave in Canada



Women's Bureau

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FOREWORD

Mark Twain, when asked what would happen to the work force without women, replied, "Mighty scarce, my friend, mighty scarce".

It is increasingly evident that without an improved and forward-looking set of provisions for maternity leave and income maintenance the future work force may become "mighty scarce". Research shows that in Canada, and internationlly women bear the double brunt of working for pay and raising a family. Many laws and policies fail to recognize the pressure of and the need to reconcile economic and family responsibilities. Consequently, many women may well continue to have serious reservations about pregnancy and childbirth.

These facts are particularly critical when one examines the realities presented by Canada's aging population. With the maturation of the "baby boom", and the decline in births, our country is experiencing near zero population growth. Also, Canada is already faced with an acute shortage of skilled labour in many fields. If the present trend continues, there will be a chronic labour shortage when this group passes through the "working age group" (25-64 years). Projections show that women will account for up to 70 per cent of the growth of the labour force, compared to 42.4 per cent as of December 1981. Canada needs children, for obvious economic, and social and cultural reasons. Aside from the labour shortage, one must address the implications of the declining number of contributors to such programs as the Canada Pension Plan. These programs are intended to support the rapidly expanding numbers in the retired segment of the population.

A great deal of improvement in social and economic policies is needed to enable women to combine employment and family responsibilities successfully, without significant financial and career loss. As the crucial years for career building coincide closely with the optimal years for pregnancy, women should not be forced into an either/or situation by legislation or collective agreements.

Similarly, men are faced with a difficult situation due to the current status of paternity leave in Canada. The lack of recognition of the father's role in childbirth and child-rearing not only hampers participation in this important event, it nourishes old attitudes which leave these responsibilities largely in the hands of women. The notion of adoption leave and leave for special family responsibilities for both men and women is gaining ground, but very slowly.

To understand why improved maternity benefits and child care leave provisions would not act as incentives to cascades of pregnancies and why women and men find it difficult to consider a break in employment which might result in a drop in financial resources, and the additional burden of a child, it is necessary to view childbearing in terms of dollars and cents. While it may seem somewhat mercenary to take this approach, this often seems to be the rule rather than the exception. A study by the Financial Post shows that raising a child (including education) can cost up to $200,000. The average annual income before taxes in 1980, for a family of four, was $30,051, however, 57.6 per cent of the families earned less than $30,000.[1]

[1] Family Income, Census Families, Statistics Canada. Catalogue No. 13-208, Annual, 1980.

Statistics also show that, of the married women in husband-wife families who worked for pay in 1980, 30 per cent have husbands whose earnings are below $15,000.[2] While some women may be able to recover part of their wages through unemployment insurance maternity benefits, men on paternity leave may, at best, receive only a few days of pay during the period of absence from work. Financially speaking, these cannot be considered as incentives for pregnancy and adoption.

Readers may be interested to note that Canada has signed the International Labour Organization (ILO) Declaration on the Equality of Opportunity and Treatment for Men and Women Workers (1975), and ratified the United Nations Convention (1979) on the Elimination of All Forms of Discrimination.[3] Under these agreements, Canada is obliged to promulgate policies, programs, and practices that would foster equality of opportunity for men and women workers. More recently, in June 1981, the ILO adopted a Convention and a Recommendation designed to create effective equality between men and women workers with family responsibilities, and to enable them to better reconcile their employment and personal responsibilities. This new international labour standard essentially calls for such measures as responsive and effective maternity, paternity, and special

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[2] "Female Labour Force Composition in 1980". Women's Bureau, Department of Labour.

[3] Canada joins 31 member states who have previously ratified this Convention. Persons interested in receiving the ILO's Convention and Recommendation titled Equal Opportunity and Equal Treatment for Men and Women Workers: Workers with Family Responsibilities are invited to contact the Women's Bureau.

leave for workers with family responsibilities. Member states are expected to increase efforts in this area, within the confines of national conditions and practices, to ensure a marketplace which is more reflective of and responsive to the evolving changes in employees' roles and responsibilities as parents. They are particularly obliged to do so when the brunt of the dual burden is borne by women employees.

Since 1966, when Canada first introduced legislation outlining some elementary maternity benefits, many changes have been implemented. This document presents an overview of the current legislative provisions in Canada, including paternity and adoption leave.

Readers who find this document helpful may wish to forward their comments to the Women's Bureau. I would like to thank Ellen Cornell of my team, and Laurie Vaughan-Evans and Daryl Lindberg for their assistance in preparing this document.

Ratna Ray,
Director,
Women's Bureau,
Labour Canada

INTRODUCTION

This publication is divided into two parts, the first covering leave provisions and the second covering benefits. Both Canadian legislation and collective agreements are included.

It is important for the reader to understand the difference between leave and benefits. Leave is a period of time for which an employee is granted an approved absence from work. The leave may be paid or unpaid, depending on the provision. Benefits are monies paid to an employee, usually when the employee is absent from work on unpaid leave.

Readers should also be aware of the relevance of jurisdiction in looking at the various legislation. At the federal level one may come under what is called federal jurisdiction. In that case the Canada Labour Code[4] would apply, except for members of the federal public service who are under a separate legislative jurisdiction. There are a number of acts and regulations which govern these employees. At the provincial level there are also two separate jurisdictions. Members of a provincial public (or civil) service are governed by public (or civil) service acts and regulations. All other employees in the provinces are governed by provincial legislation. For members of a union, provisions in collective agreements basically supersede any other legislation.

A chart for easy reference, Terms and Conditions of Maternity Leave Legislation, which provides specific information by jurisdiction, is included in Table 3. (As there is no specific legislation on maternity leave for the Northwest Territories and the Yukon, these jurisdictions are not included.)

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[4] Canada Labour Code applies to employment in interprovincial organizations dealing in transportation, communications and banking. Canada Labour Code, Part III

PART I - LEAVE PROVISIONS IN CANADIAN LEGISLATION AND COLLECTIVE AGREEMENTS

A. LEGISLATION

MATERNITY LEAVE

Qualification Period

Qualification periods were originally designed to protect the employer in instances where an employee had not established a serious work commitment. As a result, under most legislation, a woman is eligible for maternity leave only after she has been employed for a specified period of time.

The qualification period is automatically tied in with the reinstatement and job protection aspects of maternity legislation. While in many instances an employee's job is protected while she is pregnant or on maternity leave, if unable to fulfill the specific qualification period she may not be entitled to reinstatement after leave. The qualification requirement places many women at a distinct disadvantage, as acknowledged recently by British Columbia legislation which dropped this criterion from the British Columbia Employment Standards Act.

With only four exceptions, federal and provincial jurisdictions in Canada stipulate a qualification period for maternity leave. No specified time period is required under labour legislation in New Brunswick and British Columbia, nor in the Public Service Acts of New Brunswick and Prince Edward Island.

Under the remaining labour and public service jurisdictions, the qualification period ranges from six months to one year plus 11 weeks.[5] A variation is found in Quebec's Regulation Respecting Labour Standards,

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[5]See chart, Appendix A, for specific jurisdiction.

which states that a worker must have a 20 weeks of employment in the months preceding the period of leave, and be working when leave is requested.

"Continuous Employment"

Most qualification provisions include the phrase "continuous employment". At first glance the concept seems straightforward, indicating a designated period of steady employment. The interpretation becomes more difficult when it comes to a part-time or seasonal employee.

Most jurisdictions do not have a firm definition of part-time work, although most of them appear to offer maternity leave to this part of the work force. Part-time workers become eligible for leave by proving a valid employee-employer relationship, which often means fulfilling the appropriate qualification period.

An examination of the various employment regimes which exist under the heading of "part-time" reveals other problems. While the type of part-time work which resembles full-time (a set number of hours per week, every week) is readily defined as continuous, the type with irregular hours are less definitive. For example the category is ambiguous for those who work only part of the year, but do so on a full-time basis for the same period each year. On the one hand, this could be interpreted as continuous employment because the schedule may be similar, indicating an employee-employer relationship. However, because there may be large lapses in employment, chances of fulfilling the qualification period in most jurisdictions are quite slim. In this type of situation, a case can be made to disentitle these women when interpreting "continuous employment" for the

purpose of maternity leave. To protect all workers, the qualification period applicable to conditions of leave would have to be eliminated or modified to cover these diverse types of employment.

There are other situations which may constitute a break in employment. Except for labour legislation in Quebec and the Canada Labour Code, no legislation provides clarification on the issue of strikes or lockouts in relation to "continuous employment". Similarly, while casual sick leave may not be seen as breaking the continuity of employment, an extended period of illness might not be viewed in the same manner. These issues are left largely to the discretion of the employer.

Finally, one must determine when this period of qualification commences and terminates. Under labour legislation in Newfoundland and in Ontario, the qualification period is counted backwards from the estimated date of birth. Other jurisdictions do not stipulate whether the period of continuous employment must exist in its entirety before the pregnant employee gives her notice or takes her leave, or if it may be calculated to include the period up to the delivery date. These are critical factors when determining eligibility for maternity leave.

Length of Leave

Under most federal and provincial labour legislation, women are entitled to 17 or 18 weeks of maternity leave, depending on the jurisdiction in which they work.[6]

Public service acts in Canada indicate a wide range in the length of maternity leave available. Prince Edward Island provides only four months whereas the federal public service allows 37 weeks.

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[6] See Chart, Terms and Conditions of Leave Legislation, for detailed information on leave by jurisdiction.

If they are eligible, women will receive unemployment insurance benefits during part of this leave period.[7]

Notice

With the exception of New Brunswick and Nova Scotia, all labour jurisdictions require some prior formal notice that leave will be taken. This must be accompanied by a valid medical certificate verifying the pregnancy. While there is no time limit in British Columbia, the majority of other jurisdictions stipulate two, three or four weeks. The earliest notice required is 15 weeks in Newfoundland.

In the public sectors, Alberta, British Columbia, and New Brunswick require three months notice, while in Manitoba, Prince Edward Island, and Saskatchewan only one month is needed. The other jurisdictions do not specify a time limit.

If it becomes necessary for a woman to leave her job before she has submitted her notice, provisions for leave are stipulated in six labour jurisdictions. The Canada Labour Code includes this regulation, as well as Alberta, Manitoba, Ontario, Quebec, and Saskatchewan.

Time Frame

Most jurisdictions state a specific period during which leave is to be taken, indicating maximum limits of leave available before birth. The amount of pre-natal leave required ranges from six weeks in New Brunswick to 16 weeks in Quebec, with six jurisdictions providing 11 weeks.[8] In Quebec, under an Act Respecting Occupational Health and Safety covering maternity leave, a pregnant employee may transfer to another job when her health or the health security of her unborn child is in question.

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[7]See Part II of this publication.

[8]See Table 3 for specific jurisdiction.

An employee may be required to start maternity leave when the employer can prove the pregnancy has materially affected the employee's job performance. Legislation which provides the employer with this right is in effect in many provinces. Alberta and Saskatchewan place limits on the employer's right to demand early maternity leave by stating that the commencement of leave may only be required as of the 12th week prior to the expected date of birth, whereas in Quebec the time limit is six weeks. Newfoundland, Nova Scotia, New Brunswick, Ontario and Manitoba leave this matter open to interpretation, with the onus on the employer to show just cause for early commencement of leave.

Several jurisdictions enforce mandatory periods of post-natal leave, although this usually depends on the amount taken as pre-natal leave. Where post-natal limits of leave are specified in the public and private sectors, they range widely, for example from two weeks in Quebec to three months in New Brunswick. This time may be reduced upon presentation of a medical certificate stating that the employee is fit to return to work.

Job Protection

Job protection is one of the most important aspects of maternity legislation. All jurisdictions, except New Brunswick and Prince Edward Island public sectors, provide some job protection to workers who qualify for maternity leave. Under the labour codes for Canada, British Columbia, Prince Edward Island, Quebec and Saskatchewan, an employee may not be dismissed solely because of her pregnancy. British Columbia further prohibits an employer from terminating or changing the conditions of work of an employee because she is pregnant or has applied for leave, unless the employer has her written consent.

In the case of pregnant women seeking employment, only New Brunswick's Minimum Employment Standards Act provides protection. It states that an employer may not refuse to employ a woman who is pregnant for reasons arising from her pregnancy only.

Job protection clauses help, but they do not provide total job security. In many jurisdictions, the dismissal or layoff may not be for reasons of pregnancy alone. Where protection is offered only to workers eligible for maternity leave, employees who do not qualify for leave may be left unprotected.

Another consideration is the degree to which the jobs are actually protected once the period of leave is completed. No jurisdiction offers coverage once the employee has returned to work. It is conceivable that an employer could reinstate an employee one day and give her notice the next. While it is not intended to imply that employers look for legal loopholes, it does indicate a gap in our legislation.

Pregnancy Related Illness

There is a widespread opinion that because reproduction is a natural function for females, any ill effects suffered should not be considered as illness, unless the pregnancy has complicated a pre-existing medical condition or caused a new one. While most jurisdictions do not make any clear reference to leave for pregnancy related illness, the public service of Alberta and the federal government do permit leave for this reason with a medical certificate.

There are, however, a few other legislated provisions which are applicable. Under the Saskatchewan Labour Standards Act and Public Service Regulation 234/74, the Canada Labour Code, and Prince Edward Island Labour Act, an employee may not be dismissed because she is temporarily disabled due to pregnancy. Public servants in New Brunswick may use up to 10 days of accumulated sick leave during the two week waiting period for unemployment insurance benefits. Similarly, in the British Columbia and Alberta public sectors, an employee who is eligible for sick benefits may utilize this benefit should she be ill due to pregnancy. In Nova Scotia, under the Civil Service Act, sick leave may be granted to an employee if the employer wishes her to cease working before she has commenced maternity leave. Quebec legislation authorizes the use of special leave where there is a threat of miscarriage or conditions are hazardous to the unborn child. The employee must submit a valid medical certificate stating the length of leave needed.

The Canadian Human Rights Commission has established a policy on the issue of pregnancy-related illness.[9] It has taken the view that two separate conditions of leave are involved. The first period, usually about six to eight weeks in length, is when the employee is medically unable to work, and the second is when continuous 24 hour a day infant care is needed. The Commission is of the opinion that during the first period workers should be eligible for any sick leave or benefits available to any worker medically unable to work. This would include any paid or unpaid sick leave, disability insurance benefits, and any other provisions for

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[9]Canadian Human Rights Commission Newsletter, Volume 4, Number 2, March 1981.

leave without pay applicable to employees in a given workplace. This is basically a policy of equal treatment for all employees who are medically unable to work.

The British Columbia Human Rights Branch of the Ministry of Labour has had a board of inquiry since 1976. The board maintains that an employee who has a pregnancy-related disabling illness should be treated the same as any employee with any disabling illness, hence sick benefits should be applicable.

Extended Leave

One form of extended maternity leave is the provision of an extension equal to the difference between the estimated and actual date of birth. This is found in the Canada Labour Code, and in labour legislation in Manitoba, Newfoundland, Alberta, Prince Edward Island and Quebec, although the Quebec provision is not applicable if the employee has two weeks post-natal leave when the actual date is later than the estimated date.

An extension beyond the specific maternity leave period is provided under labour legislation in Alberta, British Columbia, New Brunswick, Quebec, Newfoundland and Saskatchewan. With the exception of Newfoundland, all require a medical certificate to qualify.

Under certain circumstances, Quebec provides an additional form of leave for a mother who is breastfeeding. Upon presenting the employer with a certificate attesting that her working conditions involve risks for the child she is breastfeeding, she may request a reassignment to other duties; if this is not immediately available she may stop working until she is reassigned or the child is weaned.

Paternity Leave

In a situation where the mother wishes to return to the labour force after giving birth, the availability of paternity leave could be a considerable asset even if it is unpaid. This would permit both parents to share the experience and responsibilities of full-time child care.

There are very few legislative provisions in Canada for paternity leave. Federal civil servants who are not covered by collective agreement (excluded employees) come under the direct authority of the Treasury Board and benefit from the most comprehensive plan existing today.[10] These employees receive one day of paid leave on the birth of their child and may take up to 26 weeks of unpaid paternity leave. If the spouse of the employee is also employed in the federal public service as an excluded employee, combined paternity/maternity leave taken after the date of birth of the child may not exceed 26 weeks.

The only other legislation which now provides for paternity leave is the Saskatchewan Labour Standards Act. Employees who meet the 12 month qualification period may take up to six weeks of unpaid leave in any combination, during the three months which surround the estimated date of birth. The employer requires four weeks' notice; however, if the employee is unable to meet this requirement he will be granted six weeks of continuous leave starting within three weeks of the birth of the child.

Adoption Leave

Adoption leave is available to a slightly larger extent than paternity leave. Difficulties occur when the requirements set by adoption agencies exceed the length of adoption leave provided by legislation. In

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[10] Excluded employee means an employee who does not belong to a union because such membership would constitute a conflict of interest with his/her managerial responsibilities.

most cases, one of the adoptive parents, preferably the mother, is required to spend anywhere from six months to a year at home, depending upon the age of the child. Adoptive requirements are designed to integrate the child into the family, and to establish and stabilize the relationship between the child and the adoptive parents. In most jurisdictions these requirements could result in one parent having to leave the workforce, most probably the mother. Furthermore, under existing legislation adoptive parents generally receive less consideration than natural parents.[11]

Provision of unpaid leave upon the adoption of a child ranges from two days in Quebec to 26 weeks in the federal public service (for excluded employees). Only Nova Scotia, Prince Edward Island and Quebec have such provisions in their labour legislation, whereas all public service authorities, except New Brunswick and Prince Edward Island, included provisions for unpaid leave. Excluded employees in the federal public service also receive one day of paid leave upon the adoption of a child. (For detailed information on adoption leave see Table 4.)

In most jurisdictions there is a qualifying period before an employee is eligible for adoption leave. This can range from six months to one year of continuous service. In some jurisdictions, the applicant is required to be a permanent employee. Manitoba, Nova Scotia and Quebec are the only provinces where no qualification period exists (see Table 4).

Other Leave Related to Family Responsibilities

To date, only two jurisdictions offer family-related leave other than maternity, paternity or adoption leave, the federal public service and Quebec labour legislation.

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[11]The Canadian Human Rights Commission policy states that leave provisions and benefits should be equal for all parents, males or females, adoptive or natural. Human Rights Newsletter, Volume 4, Number 2.

The federal public service package covers a variety of needs. An "excluded" employee who fulfills the qualification period may take two days at any one time, up to five days per year, with pay, to care for a sick family member (which includes children, spouse, parents and any other relative living in the same household as the employee). They are also eligible for paid leave for one-half day to accompany a family member to a medical, dental, or school appointment.

Longer periods of leave, without pay, are also available to this sector in the federal public service. One year of absence is available for personal needs. This is interpreted as leave for parental or family responsibilities, but may not be taken in conjunction with maternity or paternity leave. Also, up to five years without pay is available for the care and nurture of pre-school age children. This latter leave may be taken in one or more periods, not exceeding five years in total.

Quebec labour legislation provides for additional types of leave related to pregnancy. Where there is a risk of miscarriage, or the health of the mother is threatened, leave is provided as of the beginning of the eighth week preceding the date of delivery. This must be verified by a medical certificate. When a legal abortion or spontaneous miscarriage occurs before the beginning of the 20 weeks preceding the delivery date, the employee is entitled to maternity leave not exceeding three weeks. A maximum of five weeks leave is available in the event of a stillborn birth which occurs after the 20th week preceding the expected date of delivery. Eligibility requirements follow those previously outlined for maternity leave.

B. COLLECTIVE AGREEMENTS

The information on collective agreements presented in this publication is based largely on an analysis of Canadian collective agreements for all industries covering 200 and more employees (except the construction industry).[12] The following is an overview of provisions for maternity, childbirth, paternity, and adoption leave. One must keep in mind, here, that only 24 per cent of women are unionized.

Maternity Leave

The range of provisions available through collective agreements is quite diverse.

Of the agreements which include maternity leave provisions, 71.4 per cent of them exceed legislative limits. The greatest number, 617 agreements affecting 792,242 employees, provide at least six months maternity leave. Five months are provided in 182 agreements. The combined total affects over one million workers.

The plan negotiated by the Quebec Common Front, covering 200,000 public sector workers in Quebec, which represents about one-fifth of that province's female labour force, includes the right to two years' unpaid maternity and paternity leave, during which seniority continues to accrue and fringe benefits can be maintained if the employee chooses to pay for them.

One of the main issues of concern to women on maternity leave is their employment status after the leave is terminated. Of the collective

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[12] Provisions in Collective Agreements in Canada covering 200 and More Employees (excluding construction) April, 1982. Labour Data Branch, Collective Bargaining Division, Labour Canada. Cat. No. L82-31-4/1982.

agreements studied 24 per cent stipulated retention of seniority for the duration of the leave period, while 12 per cent allowed the accumulation of seniority during absence on maternity leave. This is an important factor in preventing a severe career setback due to pregnancy. By stipulating the accumulation of seniority while on leave, the employer enables a pregnant woman to keep in step with her colleagues in the workplace.

Readers who wish information on the terms of their specific collective agreements should contact their union representative, and those looking for more detailed information about particular types of collective agreements may wish to contact the Collective Bargaining Division of Labour Canada.[13]

Paternity Leave

Paternity leave is as neglected an issue in collective agreements as it is in legislation. The type of leave granted under a given agreement is usually one day, with or without pay, upon the birth of a child. While more focus is being placed on the father's role in childbirth and child-rearing, their desire for sharing the responsibility in a more substantial manner is not yet gaining wide support in collective bargaining activity.

While paternity leave itself may not be offered to any large degree, many collective agreements contain clauses which provide for a leave of absence to be given at the employer's discretion. It is usually considered leave for personal needs and, although there is no data on this

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[13] Labour Canada, Collective Bargaining Division, Ottawa, Ontario K1A 0J2

subject, it may be a category under which a new father may apply for leave. An example of this leave is found in the agreement of the Manitoba Food and Commercial Workers, Local 832, Canadian Imperial Bank of Commerce. Under this agreement leave may be taken for personal needs (important family or personal reasons). This leave is not to be unreasonably denied if the employee's absence does not impair the efficient operation of the branch. While this may not be categorized as paternity leave, per se, it is one manner in which male employees may be able to obtain leave on the birth of a child.

Some of the most innovative agreements to date exist in the federal jurisdiction, with certain groups of employees such as clerks and translators receiving up to 26 weeks of unpaid paternity leave.

In the private sector, the Steelworkers Local 7024, recently instituted two weeks of paid leave to care for their families upon the hospitalization of their spouse for illness, accident or maternity needs. This is a noteworthy achievement, particularly as it is an all male local. This certainly indicates the importance placed on this type of leave to fathers.

In British Columbia, the staff of Capilano College may take up to 12 months' parental leave without pay upon the birth of a child.

Adoption Leave

Relatively few agreements contain any substantial provisions for adoption leave. However, other discretionary leave which is designated for personal needs may be applicable, depending on individual employer policies. While the adoption provisions found in agreements across Canada are too diverse to describe in this small booklet, some examples follow to illustrate the range.

The Lincoln County Separate School Board in St. Catharines, Ontario, has an excellent plan for adoption leave. The elementary teaching staff, upon provision of three months' notice, receives up to 12 months' adoption leave. This leave must commence at one of three points: September, January, or the March school break. Teachers do not lose seniority or benefits, and leave may be extended for up to one additional year.

Ottawa CUPE (Canadian Union of Public Employees) Local 1400 (Board of Education) offers one month of adoption leave with a six months extension if required by the adoption agency. The employee must have one year of continuous service and give three weeks' advance notice of the intention to take leave. Upon termination of this leave, the employee will be reinstated in his/her former position at the same rate of pay.

University of Windsor (Ontario) professors receive five days adoption leave with full pay and benefits after they have completed 12 months of service.

At McGill University in Montreal, the collective agreement for the Service Employees' Union, Local 298, provides for up to ten weeks adoption leave with pay commencing upon the date of adoption. If the spouse is also covered under this agreement he/she is entitled to two days with pay.

British Columbia government employees receive one day with pay upon the adoption of a child, with an additional six months' leave without pay also available to adoptive parents.

If readers wish more detailed discription of leave, and the conditions under which it may be granted, they should contact the individual unions.

QUESTIONS - PART I

1. **How do I determine to which labour jurisdiction I belong?**

   Only a small percentage of the Canadian labour force falls under federal jurisdiction. Enterprises that do so include radio/TV broadcasting, telephone and telegraph companies, chartered banks, interprovincial airlines, railways and trucking, navigation and shipping companies, some mining companies and crown corporations. The federal public service comes under the jurisdiction of the Treasury Board. All other workers come under either provincial labour jurisdiction, or the jurisdiction of the provincial public/civil service, depending on whether they work for the public service. To clarify any problem defining juridiction, employees should contact their provincial Department of Labour.

2. **If I am unionized; does my collective agreement supersede the provisions of legislation regarding child care leave?**

   Yes. If the child care provisions of your collective agreement are better than those provided by legislation in your jurisdiction (which is usually the case), you may take advantage of them. You may choose between the provisions in your collective agreement and the labour legislation in your jurisdiction.

3. **Does human rights policy on pregnancy-related illness allow me to take sick time during pregnancy even if my employer does not wish to allow me this absence from work?**

   Not necessarily. You are required to comply with your employer's policy on sick time. However, if you feel that others in your

workplace are able to take sick time which is being unreasonably denied to you, you should contact the human rights agency for your jurisdiction.

4. **What happens if my child is born prematurely?**

If early delivery means that you have not fulfilled the qualification period for leave, you may not be eligible for leave and therefore may be in danger of losing your job. British Columbia does not have a qualification period in their labour legislation; therefore, this problem would not arise in that jurisdiction. Some labour and public service jurisdictions in Alberta, British Columbia, Manitoba, Quebec, Saskatchewan, and Nova Scotia make allowances for premature birth by stating leave may be taken even where the employee must leave work before notice can be given.

5. **As a part-time worker, am I eligible for child care leave?**

Part-time workers in all jurisdictions are not ineligible for the same periods of leave granted to regular full-time employees. Usual qualification required is valid proof of an on-going employee-employer relationship. This generally means fulfilling the same qualification period as full-time workers.

6. **Upon reinstatement, am I assured that I will be placed in my former position?**

In most jurisdictions, the answer is yes. However, some provinces qualify this by stating that, if reinstatement in the former position is not possible, you may be placed in a comparable position, at the same level of salary and benefits.

7. **As a member of the federal public service I am entitled to 37 weeks of maternity leave. Does my spouse also get an additional 26 weeks of paternity leave?**

No. You are entitled to 11 weeks maternity leave before the date of birth and 26 weeks after. If both parents are employed by the federal public service you may only use a total of 26 weeks combined maternity/ paternity leave after the date of birth. You should check your union agreement to get the exact details for your bargaining group.

PART II - BENEFIT PROVISIONS IN CANADIAN LEGISLATION AND COLLECTIVE AGREEMENTS

Benefit provisions that stipulate financial compensation during absence on leave for child care purposes generally fall under three main categories. The first and most common is the maternity benefit provided under the Unemployment Insurance Act. Second, benefits are sometimes offered by the employer in the form of a Supplemental Unemployment Insurance Benefits (SUB) plan. Third, there are those benefits provided for by collective agreement. Regrettably, in Canada at the present time there are no legislated benefits for paternity or adoption leave. The Canadian Human Rights Commission recognizes this discrepancy, in their Employer Guide, which states that "any parent, male or female, adoptive or natural, should be equally eligible for leave and other benefits".

Unemployment Insurance Maternity Benefits

Unemployment Insurance maternity benefits consist of 15 weeks of pay at 60 per cent of the employee's regular wage rate, up to a maximum.[14] In 1982 the maximum insurable earnings are $350.00 per week, providing a maximum weekly benefit of $210.00. These benefits are available only to those women who fulfill a specifically designated qualification period.

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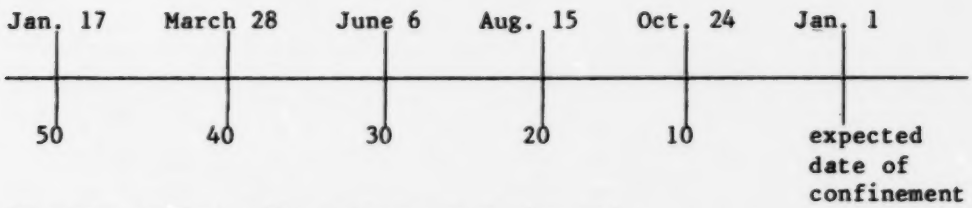
[14] A provision was introduced in 1979 that employees whose net income, including Unemployment Insurance maternity benefits and supplements, is more than one and one-half times maximum insurable earnings will have to pay back 30 per cent of the Unemployment Insurance benefit, or 30 per cent of the amount by which their incomes exceeded the threshold, whichever is less. The calculation is made at the time the individual income tax return is filed.

While there are several problems in the present unemployment insurance legislation, it is encouraging to note that it is presently under review. The Task Force of Employment and Immigration Canada has made several suggestions for change which if incorporated help to alleviate such drawbacks.

Qualification Period

Twenty weeks of insurable employment are necessary to qualify for unemployment insurance maternity benefits, ten of which must fall between the thirtieth and fiftieth week before the week of confinement. This ten week period of insurable employment, referred to as the "magic ten", basically ensures that the woman was active in the labour force at the time of conception. This ten week period is, at times, difficult to put into perspective with the period of pregnancy. The following diagram may be helpful:



10 weeks of insurable employment during this 20-week period. In the five-month period, you must have worked 10 weeks to qualify[1].

[1]If you were not employed at this time, but were off work on prescribed benefit weeks, you may be eligible - for further information, contact your U.I. office.

Although the "magic ten" reflects a certain active commitment to the labour force, it does not always reflect the working career of a woman. By adopting such criteria for benefits, women who may have had a very long attachment to the workforce could be disentitled by having a brief lapse in employment.

The argument has been made that if there were no qualification period, women who became pregnant would subsequently find work in order to receive Unemployment Insurance benefits. This kind of reasoning seriously undermines the valid reasons which motivate women to enter the paid labour force. The fact that, in 1981, only about five per cent of unemployment insurance claims paid were for maternity benefits gives some indication of the accessibility and use of these benefits.[15]

Disentitlement

There are several factors to consider when assessing the benefits available under the Unemployment Insurance Act. One of these is the provision for disentitlement. If an employee has received any other type of Unemployment Insurance benefit in the past year, this amount will be applied against her maternity claim, because the maternity benefits must be the first 15 weeks of any type of Unemployment Insurance benefits received for that claim period. As a result, pregnant women who are receiving regular benefits may find themselves in a rather difficult position. In such a situation, a woman may not have the "magic ten" and/or she may have received more than 15 weeks of regular benefits, in which case she would

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[15]Annual Supplement, Statistical Report on the Operation of the Unemployment Insurance Act, Statistics Canada Monthly Averages 1981 Quarterly. Catalogue Number 73-001

not be eligible for maternity benefits. A woman in these circumstances would not receive regular benefits for 15 weeks because of her pregnancy, but she also may not be entitled to receive maternity benefits.

Also, any other money received during the Unemployment Insurance maternity benefit period (not counting SUB plans) may disqualify the claimant from receiving further benefits. In view of this, women should enquire carefully into the method of payment of any other benefits for which they might be eligible.

Time Frame

Benefits are paid after a two week waiting period, for eight weeks prior, the week of confinement, and six weeks after the estimated date of birth. A medical certificate verifying the pregnancy must be submitted with the claim for benefits. A difficulty with this legislation is that it automatically assumes that all women are unable to work from the eighth week before delivery to the sixth week after. This policy is indicated by the practice of discontinuing payment of regular Unemployment Insurance benefits to pregnant women for this period without taking into consideration the woman's ability to work.

SUPPLEMENTAL UNEMPLOYMENT INSURANCE BENEFITS (SUB)

SUB plans, which are most often provided for under collective agreements, can be found in other instruments such as the federal government directive governing excluded employees in the federal public service. A variation of this concept also exists in the New Brunswick Civil Service Act. There are presently 1241 SUB plans in operation, 1220 of which are

expressly designed for maternity benefits. Typically, a SUB plan supplements the basic Unemployment Insurance scheme, extending the period of benefits and/or increasing the level of benefits. Some SUB plans entitle the pregnant employee to SUB benefits even if they do not qualify for Unemployment Insurance benefits.

As mentioned, excluded federal public service employees receive a SUB plan. In this jurisdiction workers receive two weeks of pay which can be applied to the two week waiting period of Unemployment Insurance maternity benefits. They receive the same rate of pay as they would receive for the Unemployment Insurance maternity benefits.

BENEFITS UNDER COLLECTIVE AGREEMENTS

Maternity Leave, Paid and Unpaid

Despite the fact that paid leave of any type is important to working parents, improved leave provisions paid or unpaid are still a prime need. Of the agreements studied for provisions relating to pregnant employees, 34.7 per cent contain sections relating to maternity leave without pay while 1.5 per cent make reference to maternity leave with full pay.[16] Another 2 per cent of the agreements cover partially paid maternity leave. Some agreements, such as those of federal government clerks and translators, provide for SUB plans. This entitles the employee on maternity leave to be paid two weeks of maternity benefits at the rate she would receive under the Unemployment Insurance program. This means that she receives pay for the two week waiting period required by the Unemployment Insurance legislation.

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[16] Provisions in Collective Agreements in Canada covering 200 and more employees (excluding construction) April 1982, Labour Data Branch, Collective Bargaining Division, Labour Canada. Catalogue Number L82-31-4/1982.

While very few employees benefit from fully paid maternity leave, several examples do exist. Academic staff at the University of Ottawa, after one year of service, are eligible for 17 weeks of maternity leave at 100 per cent of their salary. (They may also utilize up to 119 days of accumulated sick leave for pregnancy-related illness.) During the period of pregnancy and leave, they are protected from dismissal. A similar agreement exists with the faculty of the University of Windsor. These employees, upon meeting the qualification period, are eligible for 17 weeks of maternity leave, 13 of which are fully paid.

The plan negotiated by the Quebec Common Front, covering 200,000 public sector workers in Quebec (representing about one-fifth of that province's female labour force), provides for 20 weeks of maternity leave at 93 per cent of regular pay for those who qualify for Unemployment Insurance maternity benefits. The employer supplements the 60 per cent income replacement provided by Unemployment Insurance for the 15 weeks during which these benefits are payable, and then pays 93 per cent of regular wages for the following five weeks. Workers who do not qualify for Unemployment Insurance maternity benefits receive 10 weeks of benefits at 93 per cent of salary, paid by the employer, and a further 10 weeks of unpaid maternity leave. Fringe benefits are continued by the employer during the leave period.

In August 1981, the Canadian Union of Postal Workers negotiated 17 weeks of paid maternity leave, a combination of unemployment insurance maternity benefits and SUB plan equalling 93 per cent of their regular salary.

Another example of a partially paid leave period can be found in the Collective Agreement of United Press International of Canada. These employees, upon written request, may be granted four weeks' maternity leave with pay and up to an additional seven months' maternity leave without pay. An extension of up to 12 months leave without pay is available, if required for medical reasons.

Paternity Leave

In all industries reviewed, 84 per cent of collective agreements do not offer any paid paternity leave to their employees.[17] Those remaining offer leave with pay ranging from one to five days or more, with the largest proportion offering one day.

Adoption Leave

Of the agreements studied, only 10.6 per cent offered some form of adoption leave with pay. As with paternity leave, these provisions ranged from one day to five days or more with pay.

Application of Sick Leave Benefits

Another form of benefit found in a few agreements is the provision to apply accumulated sick leave credits to a period of absence due to pregnancy. For example, employees in the New Brunswick Civil Service may apply two weeks of sick leave benefits to the waiting period for Unemployment Insurance maternity benefits. This type of provision is similar to what is called a SUB plan.

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[17] Ibid.

CONTINUITY OF BENEFITS - LEGISLATIVE AND COLLECTIVE

In most major collective agreements, provisions are included that determine the status of employee benefit plans while the employee is on leave. While some provide for the continuation of payment to benefit plans during the period of absence, others stipulate retroactive payments upon the employee's reinstatement. These provisions are quite similar to those found in legislation.

Aside from actual payment of benefits during a period of leave, legislation will also usually mention benefits in the reinstatement provisions. These terms generally refer to employee plans for insurance, medical coverage, pensions and seniority.

Most labour jurisdictions stipulate that while there is no loss of benefits or seniority during leave, nothing is accumulated past the date of commencement of leave until the employee has been reinstated. However, British Columbia and Quebec have legislated provisions for employees taking maternity leave. British Columbia considers the employee "continuous" for pension, medical, and other benefits where the employers pay the full cost or the employee elects to pay her share of the joint costs. Similarly, Quebec allows for continuation of benefits when part of the costs are paid by the employee. (Details of benefit provisions for each jurisdiction are shown in Table 5.)

In the provincial public sectors, employees usually retain the benefits which accrued prior to leave; British Columbia, Ontario, and Saskatchewan Public Service Acts make the provision that employees may continue benefit plans. They may do so by making payments during leave or through retroactive payments upon reinstatement.

OTHER FAMILY BENEFITS

Family Allowance

This federal program offers monthly benefits to one parent or guardian for each dependent child who is under the age of 18. In order to qualify, the child must live at home or be maintained by the parent or guardian. One of the parents or guardians must be a Canadian citizen, be admitted to Canada as a permanent resident, or be admitted to Canada as a visitor or permit holder for a period of not less than one year.

Payments are adjusted annually, and the current payment is $26.91 per child per month, in eight of the 10 provinces. The benefit may be varied at the request of the provincial government. In Alberta and Quebec the amount paid is related to the number of children, their ages, and place in the family. By taking these facts into account, the provincial authorities supplement the federal allocation.

Family allowance is considered income for the person who claims exemption for the child for the purposes of income tax. If neither parent claims an exemption for the child, the allowance is considered income for the person who receives the monthly payment.[18]

Child Tax Credit

Canada introduced a child tax credit program in 1978. In 1981, where the family income did not exceed $23,470 a federal income tax rebate of $261 per child was provided. For those families with an income above this level, the amount of credit was reduced by 5 per cent of the portion above this level. To be eligible, the child must be under 18 and in custody of the claimant at the end of the tax year. The limit is adjusted annually.

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[18] Information concerning family allowances can be obtained from the Income Security Program Branch, Health and Welfare Canada, Ottawa, or the regional office in each province.

Mother's Allowances

This program is designed for mothers who are widowed, divorced, deserted or separated, and for those women whose husbands have been in prison or a hospital for six months or more. Single mothers over the age of 16 with one or more children, age three months or older, are eligible for these benefits. The level of payment received under this program is determined on a needs-test basis.

QUESTIONS - PART II

1. **I am a teacher and when I went on maternity leave I received a lump sum adjustment for the part of my salary I would have received during the summer months. Will this affect my claim for Unemployment Insurance maternity benefits?**

   No. A recent Supreme Court decision found that this lump sum was payment for services already rendered and, therefore, could not be allocated to the summer months for the purposes of disentitlement of maternity benefits.

2. **I was recently cut off regular Unemployment Insurance benefits because I am pregnant and have reached the point of eight weeks before delivery. I have subsequently found work, proving that I am able and available to be employed. Can I be reimbursed for the benefits I lost during the period of disentitlement?**

   No. This is against the Unemployment Insurance Commission's benefit policy.

3. **Does a SUB Plan interfere with the Unemployment Insurance maternity benefits?**

   No. This type of plan is intended to supplement Unemployment Insurance maternity benefits by providing payments similar to the Unemployment Insurance benefits during the two week waiting period established by the Unemployment Insurance Commission.

4. How do I apply for Unemployment Insurance maternity benefits?

All branches of Employment and Immigration Canada have employment centres. Information kits for maternity benefit claims may be obtained at any of these centres.

Table 1

Title and Date of Maternity Legislation by Jurisdiction (including size of female labour force)

Jurisdiction	Female Labour Force	Women as a Per Cent of Total Labour Force	Date	Name of Act	Enforcement Agency
Canada: mostly interprovincial companies	176 592	36.8	1971	Canada Labour Code	Conditions of Work, Canada Dept. of Labour
Canada: public service	84 801	39.3	1981	Directive governing leave for family responsibilities	Treasury Board, Public Service Commission
Alberta	462 000	40.6	1981	Employment Standards Act	Labour Standards Branch
British Columbia	546 000	40.8	1980	Employment Standards Act	Labour Standards Program
			1976	Public Service Act	British Columbia Public Service Commission
Manitoba	203 000	41.2	1976 (1972)	Employment Standards Act	Employment Standards Division, Dept. of Labour
			1970	Civil Service Act	Manitoba Civil Service Commission
New Brunswick	117 000	39.5	1976	Minimum Employment Standards Act	Manpower Operations Branch, Dept. of Labour and Manpower
			1973	Financial Administration Act	Civil Service Commission
Newfoundland	78 000	35.7	1978	Labour Standards Act	Labour Standards Division, Dept. of Labour and Manpower

Table 1 (concluded)

Jurisdiction	Female Labour Force	Women as a Per Cent of Total Labour Force	Date	Name of Act	Enforcement Agency
Nova Scotia	148 000	40.3	1973	Labour Standards Code	Manpower Operations Branch, Dept. of Labour and Manpower
			1976	Civil Service Act	Civil Service Commission
Ontario	1 883 000	42	1975 (1970)	Employment Standards Act	Employment Standards Branch, Ministry of Labour
			1970	Public Service Act	Ontario Public Service Commission
Prince Edward Island	22 000	40.7	1982 (1974)	Labour Standards Act	Dept. of Labour
			1969	Civil Service Act	P.E.I. Civil Service Commission
Quebec	1 180 000	39.3	1978	Minimum Wage Act Ordinance No. 17	Minimum Wage Commission, Labour Standards Commission
Saskatchewan	173 000	38.1	1979 (1972)	Labour Standards Act	Women's Division, Dept. of Labour
			1974	Public Service Act	Saskatchewan Public Service Commission

Sources: Labour Data Branch, Labour Canada, 1977.
Annual Report 1981, Public Service Commission.

The Labour Force, Statistics Canada Cat. No. 71-001 December 1981, Table 68.

Table 2

Enforcement Procedures, Protection from Reprisals and Penalties by Jurisdiction

Jurisdiction	Enforcement Procedures	Protection from Reprisals	Penalties for Contravention
Federal: mostly interprovincial companies	- case may arise from inspection or complaint - may relate to one or more employees - proceedings may start anytime within two years of the contravention - if no settlement is obtained, Dept. of Labour instructs the Minister of Justice to launch a prosecution	- no dismissal due to pregnancy or an application for leave	- up to $1 000 or one year imprisonment or both - pay compensation to the employee for loss of employment - reinstate employee - $50 for each day of refusal to comply with an order of a convicting court
Federal Public Service	- presentation before the Public Service Staff Relations Board	- not mentioned	- penalty dependent on the type of contravention
Alberta	- inquiry - Board Order with approval of Lt. Governor in Council	- may not dismiss or layoff an employee due to pregnancy or application for leave - failure to provide maternity benefits a breach	- up to $10 000 for a corporation - up to $5 000 for an individual or up to 6 months imprisonment for default of payment
Alberta Public Service	- investigation by Public Service Commission - complaint to union	- not mentioned - may be covered under collective agreement	- dependent on type of contravention
British Columbia	- prosecution in the Court of Summary conviction	- an employer may not terminate or change the working conditions of a pregnant employee without her written consent	- fine the employer - at the discretion of the judge

Table 2 (continued)

Jurisdiction	Enforcement Procedures	Protection from Reprisals	Penalties for Contravention
British Columbia Public Service	- internal appeal procedure - ombudsman to handle complaints - complaints to union	- not mentioned specifically - must have just cause for dismissal - may be covered by collective agreement	- dependent on type of contravention
Manitoba	- complaint within 6 months and/or an investigation - division: dismissal or order to comply - county court: cannot pay lost wages where a woman has not been reinstated	- cannot dismiss an employee due to pregnancy if the employee qualifies for leave	- maximum of $500 or 3 months imprisonment or both - where an employer does not comply with an order to pay wages, maximum of $100 per day and/or 3 months imprisonement - corporation: maximum $1 000
Manitoba Civil Service	- investigation - complaint to union	- not mentioned - may be covered by collective agreement	- dependent on type of contravention - suspension, dismissal
New Brunswick	- settled through conciliation - provincial court	- may not refuse to employ a woman because of pregnancy only	- fine not less than $100 and not more than $1 000 - default in payment or fine: imprisonment
New Brunswick Civil Service	- investigation - complaint to union	- not mentioned	- dependent on type of contravention
Newfoundland	- investigation - complaint - if no settlement, acquire consent of Minister of Justice to prosecute	- may not dismiss due to absence on maternity leave - reverse onus	- $100 to $500 for failure to comply or up to 3 months imprisonment for default in payment for "natural person" - $200 to $1 000 for a corporation - second offense: double penalty

Table 2 (continued)

Jurisdiction	Enforcement Procedures	Protection from Reprisals	Penalties for Contravention
Nova Scotia	- investigation, complaint - Director - referal to tribunal - appeal to courts	- shall not terminate the employment due to pregnancy if she qualifies for leave	- contravention of the Code: - maximum fine of $100 - default of payment: imprisonment for not more then 50 days - contravention of Tribunal Order: maximum fine $500 or 90 days or both - corporation: maximum fine $1 000
Nova Scotia Civil Service	- investigation - complaint to union	- not mentioned - may be covered by collective agreement	- dependent on type of contravention
Ontario	- investigation - order to reinstate, correct policies, and/or pay compensation	- may not be dismissed due to pregnancy if she qualifies for leave	- if an individual not more than $1 000 - maximum fine of $10 000 or 6 months imprisonment if a corporation, trade union or council of trade unions, or employers organization
Ontario Public Service	- complant to Public Service Commission - complaint to union	- not mentioned specifically - may be covered by collective agreement	- dependent on type of contravention
Quebec	- complaint - Ministry of labour	- not mentioned	- nothing specific, up to Commission
Prince Edward Island Public Service	- file grievance with union - excluded employees may report to chairman of the Civil Service	- not mentioned - may be covered by collective agreement	- dependent on type of contravention

Table 2 (concluded)

Jurisdiction	Enforcement Procedures	Protection from Reprisals	Penalties for Contravention
Prince Edward Island	- complaint to Labour Relations Board (see paragraph 70,919 of Canadian Labour Law Reporter)	- an employee may not be dismissed, layed off or suspended by reason only of the fact that she is pregnant, is temporarily disabled because of pregnancy or has applied for maternity leave	- minimum fine not less than $100, not more than $1 000 for employee or individual - for an employer trade union or employers' organization fine not less then $500, not more than $5 000
Saskatchewan	- complaint/investigation division - Magistrates Court, Court of Queen's Bench	- may not be dismissed due to pregnancy - reverse onus	- up to $200 for first offence and up to 30 days imprisonment for default of payment - up to $500 for subsequent offences and up to 90 days imprisonment for default of payment
Saskatchewan Public Service	- investigation - complaint to union - appeal to Public Service Commission	- an employee who has completed 12 months service may not be dismissed or laid off solely because she is pregnant or has applied for leave	- settlement will depend on classification of employee as well as governing body (union or Public Service Commission)

TABLE 3: TERMS AND CONDITIONS OF MATERNITY LEAVE LEGISLATION

JURISDICTION	QUALIFICATION PERIOD	EXEMPTION	LENGTH OF LEAVE	CONDITIONS	RIGHTS OF EMPLOYER TO REQUIRE LEAVE	PREGNANCY RELATED ILLNESS	EXTENSION OF LEAVE
Canada - mostly interprovincial companies	• 12 months' continuous employment completed	• none	• 17 weeks: Up to 11 weeks before, up to 17 weeks after plus time between expected and actual date of birth	• notice in writing 4 weeks before leave • medical certificate certifying pregnancy and giving estimated date of birth • if no notice still 17 weeks with medical certificate stating she is unable to perform duties (must be related to pregnancy) • reinstatement in same or comparable position	• nothing in legislation re early leave	• protected under Div. V6 (sick leave) of the Canada Labour Code. Employee with three months continuous employment who is sick for up to 12 weeks cannot be dismissed solely because she is ill whether or not the illness is related to pregnancy. • Canadian Human Rights Commission has developed an equality of treatment policy	• no provision for extention of maternity leave. Protected under Labour Code for up to 12 weeks' sick leave.
Canada - Public Public Service	• appointed for 6 months of employment	• these provisions cover	• 17 weeks: Up to 11 weeks before birth	• notify the deputy head weeks before the estimated date of delivery • medical certificate • reinstated in the same or comparable position with the same wages and benefits	• nothing in the directive	• employee may use	• may take extended
New Brunswick - Labour	• none	• domestic workers, farm workers, child employed by parent or guardian	• 12 weeks: up to 6 weeks before, 6 weeks after, up to a maximum of 17 weeks	• medical certificate stating delivery will probably take place in 6 weeks	• debatable, nothing to prohibit employer from requiring leave • may not refuse to employ a person because of pregnancy	• no clear reference	• additional leave with medical certificate
New Brunswick - Public Service	• none	• none	• 5 months: 2 months before delivery and 3 months after birth	• 3 months' advance notice • no mention of reinstatement	• no provision	• no provision although employee may use 10 accumulated days' sick leave during waiting period of unemployment insurance benefits	• this period may be extended with the presentation of a medical certificate

TABLE 3: TERMS AND CONDITIONS OF MATERNITY LEAVE LEGISLATION

JURISDICTION	QUALIFICATION PERIOD	EXEMPTION	LENGTH OF LEAVE	CONDITIONS	RIGHTS OF EMPLOYER TO REQUIRE LEAVE	PREGNANCY RELATED ILLNESS	EXTENSION OF LEAVE
Canada - mostly interprovincial companies	• 12 months' continuous employment completed	• none	• 17 weeks: Up to 11 weeks before, up to 17 weeks after plus time between expected and actual date of birth	• notice in writing 4 weeks before leave • medical certificate certifying pregnancy and giving estimated date of birth • if no notice still 17 weeks with medical certificate stating she is unable to perform duties (must be related to pregnancy) • reinstatement in same or comparable position	• nothing in legislation re early leave	• protected under Div. V6 (sick leave) of the Canada Labour Code. Employee with three months continuous employment who is sick for up to 12 weeks cannot be dismissed solely because she is ill whether or not the illness is related to pregnancy. • Canadian Human Rights Commission has developed an equality of treatment policy	• no provision for extention of maternity leave. Protected under Labour Code for up to 12 weeks' sick leave.
Canada - Public Service	• appointed for 6 months or more or permanent employee	• these provisions cover exempted employees except for term employees or minister's staff	• 37 weeks: Up to 11 weeks before, and 26 weeks after • can apply for deferral	• notify the deputy head at least 15 weeks in advance of the estimated date of delivery • may have to supply medical certificate • reinstatement in same position with same salary and benefits	• nothing in the directive re early leave	• employee may use accumulated sick leave	• may take extended leave at discretion of Deputy Head
Alberta - Labour	• 12 months' continuous employment	• domestics in private dwellings, farm labourers, municipal police, and provincial government employees	• 18 weeks: up to 12 weeks before and 6 weeks following the actual date of delivery, plus the time between the estimated and actual date of birth. May return before 6 weeks with medical certificate and agreement by employer.	• 2 weeks' notice • medical certificate certifying pregnancy and giving expected date of birth • no notice, only where medical reasons to stop work, certificate • reinstatement in same or comparable position with no less than same wages and benefits. Where operations have been discontinued this section applies for 12 months after end of leave.	• may require commencement of leave 12 weeks prior to expected date of birth where pregnancy interferes with performance of duties	• cannot terminate due to pregnancy	• 3 weeks' extension for medical reasons
Alberta - Public Service	• one year of continuous service	• none	• 17 weeks: this is a minimum limit on leave. Employees may take between 17 weeks and 6 months.	• notice must be given 3 months in advance • reinstatement to former position or one in the same class in the same department	• department may determine the commencement of leave unless a medical certificate is provided	• may use casual illness or general illness leave if ill prior to commencement of maternity leave	• no provision
British Columbia - Labour	• none	• specified professionals, certain categories of salesmen, students in certain approved work programs, students employed at school where they are enrolled, persons employed in a private residence solely to attend to a child, a disabled, infirm or other person, persons receiving income assistance while participating in an employment program, artists, musicians, performers or actors, student nurses	• 18 weeks: up to 11 weeks before delivery, leave may be shortened with a medical certificate	• no time limit on notice • medical certificate • reinstatement in former position or in a comparable one with all increments to wages and benefits	• an employer may require an employee to commence leave if she is unable to perform her duties	• Human Rights Commission has policy supporting this	• lengthened with medical certificate — 6 consecutive weeks
British Columbia - Public Service	• an initial probationary period	• none	• 6 months: up to 9 weeks before delivery to a maximum of 6 months	• 3 months' advance notice • reinstatement in former position or one of equal rank and salary	• no provision	• if eligible for sick leave, may use	• up to an additional 6 months for health reasons with presentation of a medical certificate
Manitoba - Labour	• 12 months prior to application for leave	• none	• 17 weeks: up to 11 weeks before, no less than 6 weeks after	• 4 weeks' notice • medical certificate certifying pregnancy and giving expected date of birth • if no notice, still entitled to 17 weeks with medical certificate stating she is unable to perform normal duties due to medical conditions • reinstatement in same or comparable position with at least the same wages and benefits • continuous	• no right to determine when leave is to begin unless the employer can prove cause	• no provision	• extension beyond 17 weeks when delivery occurs after the estimated date
Manitoba - Public Service	• 12 consecutive months of employment	• none	• 17 weeks: up to 11 weeks before birth	• notice in writing 4 to 10 weeks before the estimated date of delivery • medical certificate • reinstated in the same or comparable position with the same wages and benefits	• no provision	• no provision	• no provision
New Brunswick - Labour	• none	• domestic workers, farm workers, child employed by parent or guardian	• 12 weeks: up to 6 weeks before, 6 weeks after, up to a maximum of 17 weeks	• medical certificate stating delivery will probably take place in 6 weeks	• debatable, nothing to prohibit employer from requiring leave • may not refuse to employ a person because of pregnancy	• no clear reference	• additional leave with medical certificate
New Brunswick - Public Service	• none	• none	• 5 months: 2 months before delivery and 3 months after birth	• 3 months' advance notice • no mention of reinstatement	• no provision	• no provision although employee may use 10 accumulated days' sick leave during waiting period of unemployment insurance benefits	• this period may be extended with the presentation of a medical certificate

Newfoundland - Labour	·12 months' continuous employment with the same employer	·domestic servants in premises providing board or lodging for less than 3 persons ·employees who are qualified in or training in certain prescribed occupations	·17 weeks: up to 11 weeks before, 6 weeks after, plus time between expected and actual date of birth. To reduce/increase period requires a medical certificate.	·notice to employer of estimated birth date no later than 15 weeks before that date ·medical certificate certifying pregnancy and giving expected date of birth ·reinstatement with nothing less beneficial than the wages, duties, benefits and position at the beginning of leave	·may require leave according to legislation	·no provision	·difference - between expected and actual date of birth may be additional to the 17 weeks ·increase requires medical certificate
Nova Scotia - Labour	·12 months' continuous employment	·domestic servants, practitioners, students in certain fields, professionals, teachers	·17 weeks: up to 11 weeks before, 6 weeks after. Entitled to a total of 17 weeks. No less than 6 weeks after without a medical certificate.	·notice not mentioned ·medical certificate specifying expected date of birth ·guaranteed resumption of work ·no loss of benefits or seniority	·may require leave to commence when duties cannot reasonably be performed by a pregnant women or if performance of work is materially affected, from 11 weeks before delivery	·leave could be granted if employer wishes employee to cease working	·may be longer than 17 weeks if the employer requires commencement
Nova Scotia - Public Service	·at least one year's service	·none	·18 weeks: up to 11 weeks before with a minimum of 7 weeks after birth. May return sooner with medical certificate.	·no notice ·entitled to same position after leave with no loss of seniority or benefits	·see next block	·sick leave if employer asks her to cease working	·no provision
Ontario - Labour	·one year and 11 weeks prior to expected date of birth	·students in certain approved work programs, inmates of provincial correctional institutions, offenders performing work under court orders	·17 weeks: up to 11 weeks before, no less than 6 weeks after without a medical certificate	·2 weeks' notice ·medical certificate giving date of birth ·if no notice, retroactive notice and a medical certificate must be provided within 2 weeks of commencement of leave ·reinstatement in same or comparable work with same salary ·also reinstatement after layoffs and discontinued position in a comparable position	·may be asked to commence leave if the performance of work materially affected	·no provision	·no provision
Ontario - Public Service	·more than one year service	·none	·17 weeks: up to 11 weeks before birth, at least 6 weeks after birth. May return earlier with medical certificate, and one week notice.	·no notice ·reinstatement in former position and will be paid at the same salary level as before leave	·no provision	·no provision	·no provision
Prince Edward Island - Labour	·12 months continuous s	·farm labourers	·17 weeks, prenatal: 11 weeks before estimated birth, post-natal: not less than 6 weeks ·when actual date of birth later than estimated, employee still entitled to 6 weeks post-natal ·leave may be shortened at request of employee	·4 weeks notice ·medical certificate ·reinstatement in same or comparable position with no loss of benefits or wages	·employer may request employee to begin leave not more than 3 months before the estimated date of birth, onus of proof is on the employer	·may not dismiss, layoff, or suspend an employee by reason only of the fact she is pregnant, temporarily disabled, applied for leave	·if date later than expected, still entitled to six weeks post-natal
Prince Edward Island - Public Service	·none	·none	·4 months	·does not affect accumulated sick leave or vacation credits	·no provision	·if premature, special leave may be considered	·for personal reasons, up to 2 years
Quebec - Labour	·20 weeks in the preceding 12 months and be working for the employer the day preceding the leave. Employee is considered employed during a strike or lockout	·farm labourers on farms with 3 employees or less, day-care domestics, students employed in a job induction program	·18 weeks: up to 16 weeks before the expected date of birth to a total of 18 weeks. No less than 2 weeks after without a medical certificate. ·leave may be extended the difference between expected and actual date of birth when the actual date is later; does not apply if 2 weeks leave remains.	·employee is notified 4 weeks before termination of leave ·employee is required to give 2 weeks notice of her intention to return to work	·as of 6 weeks before the expected date of birth, employer may require the pregnant employee to produce medical certificate attesting she is fit to work. If not produced in 8 days the employer may oblige employee to take maternity leave immediately.	·if there is a risk of miscarriage or to health of mother or child, employee entitled to a special maternity leave as prescribed by medical certificate — if so, leave provided as of beginning of 8th week preceeding delivery ·if legal abortion or spontaneous miscarriage takes place before 20th week preceding delivery, entitled to maternity leave not in excess of three weeks ·stillborn birth after the 20th week preceding delivery date, maternity leave ends at latest 5 weeks after still birth ·breastfeeding mother may furnish certificate that working conditions involve risks to child, requesting reassignment. If not immediate, may stop work until reassigned or child weaned.	·regular leave may be extended up to 6 weeks for medical reasons, a medical certificate must be provided ·employee who fails to return on established date is presumed to have quit
Saskatchewan - Labour	·12 months' continuous employment	·employees in farming, ranching, or market gardening	·18 weeks: up to 12 weeks before expected date of birth, return earlier if mutually agreeable (give employer 2 weeks notice of return)	·4 weeks' notice ·medical certificate certifying pregnancy and giving expected date of birth ·where no application made: total leave 14 weeks, not less than 6 weeks post-natal ·reinstatement in same or comparable position with no less than same wages and benefits	·3 months	·employer cannot dismiss, layoff, suspend or otherwise discriminate because the employee is temporarily disabled due to pregnancy, is pregnant, or has applied for leave	·6 weeks' extension for medical reasons (with medical certificate)
Saskatchewan - Public Service	·12 consecutive months of employment	·none	·6 months: 3 months before delivery and 3 months after delivery	·one month notice plus medical certificate ·reinstated in same position	·employer may require the employee to take a period of leave not to exceed 2 months immediately prior to the estimated confinement date and/or 2 months immediately subsequent to the date of birth where the pregnancy of an employee and/or the requirements of post-natal care would reasonably interfere with the performance of her duties	·cannot be dismissed solely because she is pregnant	·no provision

Jurisdiction
Federal Public Service
Alberta
British Columbia

Quebec - Labour	•20 weeks in the preceding 12 months and be working for the employer the day preceding the leave. Employee is considered employed during a strike or lockout	•farm labourers on farms with 3 employees or less, day-care domestics, students employed in a job induction program	•18 weeks: up to 16 weeks before the expected date of birth to a total of 18 weeks. No less than 2 weeks after without a medical certificate. •leave may be extended the difference between expected and actual date of birth when the actual date is later; does not apply if 2 weeks leave remains.	•employee is notified 4 weeks before termination of leave •employee is required to give 2 weeks notice of her intention to return to work	•as of 6 weeks before the expected date of birth, employer may require the pregnant employee to produce medical certificate attesting she is fit to work. If not produced in 8 days the employer may oblige employee to take maternity leave immediately.	•if there is a risk of miscarriage or to health of mother or child, employee entitled to a special maternity leave as prescribed by medical certificate — if so, leave provided as of beginning of 8th week preceeding delivery •if legal abortion or spontaneous miscarriage takes place before 20th week preceding delivery, entitled to maternity leave not in excess of three weeks •stillborn birth after the 20th week preceding delivery date, maternity leave ends at latest 5 weeks after still birth •breastfeeding mother may furnish certificate that working conditions involve risks to child, requesting reassignment. If not immediate, may stop work until reassigned or child weaned.	•regular leave may be extended up to 6 weeks for medical reasons, a medical certificate must be provided •employee who fails to return on established date is presumed to have quit
Saskatchewan - Labour	•12 months' continuous employment	•employees in farming, ranching, or market gardening	•18 weeks: up to 12 weeks before expected date of birth, return earlier if mutually agreeable (give employer 2 weeks notice of return)	•4 weeks' notice •medical certificate certifying pregnancy and giving expected date of birth •where no application made: total leave 14 weeks, not less than 6 weeks post-natal •reinstatement in same or comparable position with no less than same wages and benefits	•3 months	•employer cannot dismiss, layoff, suspend or otherwise discriminate because the employee is temporarily disabled due to pregnancy, is pregnant, or has applied for leave	•6 weeks' extension for medical reasons (with medical certificate)
Saskatchewan - Public Service	•12 consecutive months of employment	•none	•6 months: 3 months before delivery and 3 months after delivery	•one month notice plus medical certificate •reinstated in same position	•employer may require the employee to take a period of leave not to exceed 2 months immediately prior to the estimated confinement date and/or 2 months immediately subsequent to the date of birth where the pregnancy of an employee and/or the requirements of post-natal care would reasonably interfere with the performance of her duties	•cannot be dismissed solely because she is pregnant	•no provision

Table 4

Paternity, Adoption and Other Related Leave

Jurisdiction	Name of Legislation	Paternity Leave	Adoption Leave	Other Related Leave
Federal Public Service	Directive Governing Leave for Family Responsibilities	- one day with pay upon the birth of a child	- one day with pay	- two days with pay to care for a sick family member
		- 26 weeks without pay after the birth of a child	- 26 weeks without pay upon the adoption of a child	- ½ day with pay to take family member to an appointment (medical)
			- if both father and mother employed in the federal public service combined total not to exceed 26 weeks	- up to one year without pay for personal needs
				- not to be taken in conjunction with maternity/ paternity leave
				- up to 5 years without pay to care for and nurture a pre-school age child
Alberta	Public Service Act	-	- up to 6 months unpaid leave upon adoption of a child (1 year qualifying	-
			- 1 day paid for adoption proceedings	-
British Columbia	Public Service Act	-	- up to 6 months unpaid leave upon adoption of a child (completion of probationary period, only one parent eligible)	-

Table 4 (continued)

Jurisdiction	Name of Legislation	Paternity Leave	Adoption Leave	Other Related Leave
Manitoba	Civil Service Act	-	- up to 10 weeks unpaid leave upon adoption of a child (proof of adoption)	-
Nova Scotia	Labour Standards Code	-	- up to 5 weeks unpaid leave upon adoption of a child age 5 or under	-
	Civil Service Act	-	- up to 4 weeks unpaid leave upon adoption of a child age 5 or under	-
Ontario	Public Service Act	-	- up to 6 weeks unpaid leave upon adoption of a child (1 year qualifying)	-
Prince Edward Island	Labour Act	-	- up to 6 weeks upon receipt of notice from the Director of Child Welfare Agency, child 6 years or younger	
Quebec	An Act Respecting Labour Standards	-	- 2 days without pay upon adoption of a child	
	Regulation Respecting Labour Standards under An Act Respecting Labour Standards	-		- where there is danger of a miscarriage, 3 weeks unpaid leave - 5 weeks unpaid leave following still birth before the 20th week - 3 weeks unpaid leave following legal abortion before the 20th week

Table 4 (concluded)

Jurisdiction	Name of Legislation	Paternity Leave	Adoption Leave	Other Related Leave
Saskatchewan	Labour Standards Act	- 4 weeks notice must be given (1 year qualifying)	- 4 weeks notice must be given	-
		- up to 6 weeks unpaid leave to be taken any time during the 3 months which surround the birth	- up to 6 weeks unpaid leave commencing on the date of adoption, with qualifying period	

Table 5

Benefit Provisions in Legislation

Jurisdiction	Benefit Provisions
Canada - mostly interprovincial companies	- employer not required to continue payments during leave, employment is deemed continuous upon reinstatement for the purposes of benefit plans
Canada - public service	- seniority maintained - Supplemental Unemployment Benefit Plan (SUB): providing employee qualifies for Unemployment Insurance maternity benefits - Benefits are usually pro-rated for part-time employees (1) provincial medical insurance: transfer to spouse or pay directly (2) Group Surgical/Medical Insurance: coverage automatic, payment by lump sum or on a monthly basis for the duration of the absence (3) Superannuation: employer continues to pay, employee pays on return (4) Disability or long term disability insurance continued during leave, pay on return (5) Public Service Management Insurance - must pay in advance to be covered (6) QPP/CPP: no deduction, no catch-up payments
Unemployment Insurance	- maternity benefits for 15 weeks, after a 2 week waiting period - must have 20 weeks' insurable employment, 10 of which are between the 30th and 50th week before the week of confinement - benefits paid at 60 per cent of regular earnings (to a maximum)
Alberta: labour	- retain benefits accumulated prior to leave, no contributions required while on leave
Alberta: public service	- employee is responsible for pre-paying her own and the employer's portion of group life and health care insurance - dental claims may not be submitted until reinstated - Blue Cross: employee pays all - pension: employee buys back upon reinstatement - continues to earn vacation during first 22 days of leave

Table 5 (continued)

Jurisdiction	Benefit Provisions
British Columbia: labour	- benefits are accumulated during period of leave
British Columbia: public service	- employees have the option to continue payments on benefit plans
Manitoba: labour	- no loss of benefits accrued prior to leave
Manitoba: public service	- same level of benefits upon reinstatement
New Brunswick: labour	- none earned during leave
New Brunswick: public service	- an employee may use up to 10 days sick leave for U.I. waiting period - no loss of benefits accrued prior to leave
Newfoundland: labour	- same as that which employees had at beginning of leave, retained during leave unless otherwise agreed
Nova Scotia: labour	- no loss of seniority or benefits accrued prior to leave
Nova Scotia: public service	- no loss of seniority and benefits accrued prior to leave
Ontario: labour	- no loss of benefits or seniority accrued prior to leave
Ontario: public service	- insurance plans (life, health, dental) are continued as long as employee continues payment - vacation leave is not accumulated - pension may be bought back upon reinstatement
Prince Edward Island: labour	- employer not obliged to pay pension benefits in respect of any period maternity leave granted
Prince Edward Island: public service	- leave does not affect previously accumulated benefits
Quebec: labour	- no loss of benefits (subject to regular payment, part of which is paid for by the employer), retains all up to work stoppage

Table 5 (concluded)

Jurisdiction	Benefit Provisions
Saskatchewan: labour	- same wages and benefits as before commencement of maternity leave, no loss of seniority or pension
Saskatchewan: public service	- benefits are not accumulated during leave - disability and group life insurance coverage may continue with retroactive payments upon reinstatement - superannuation paid upon reinstatement